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IN THE
COURT OF APPEALS OF INDIANA

KENNETH R. PICKETT and PICK & SAVE, INC., an Indiana Corporation,	)	
Appellants-Defendants,	)	
vs.	)	No. 11A01-0806-CV-285
CRAIG S. COOPER and CARSON L. COOPER,	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Joseph Trout, Judge
Cause No. 11C01-0605-CC-198

October 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Kenneth R. Pickett ("Kenneth") and Pick & Save, Inc., an Indiana Corporation (collectively, "Pickett") appeal the trial court's judgment in favor of Craig S. Cooper ("Craig") and Carson L. Cooper ("Carson") (collectively, "Cooper"), which reformed a deed to certain land and compelled Pickett to convey a .08-acre tract of land to Cooper. Pickett raises the following restated issues:

> I. Whether the trial court erred in concluding that the transfer of land by Kenneth and Margaret L. Cooper ("Margaret") in a quitclaim deed recorded on June 21, 2004 was a mutual mistake of fact and subject to the remedy of reformation;
>
> II. Whether the trial court erred in concluding that the conveyance was not a gift and therefore applied the incorrect standard of review; and
>
> III. Whether the trial court erred in concluding that it could apply the remedy of reformation to modify a deed to include land owned by a corporation that was not involved in the original conveyance.

We affirm.

FACTS AND PROCEDURAL HISTORY

This case involves two parcels of land, which have been owned by members of the Pickett family for many years.[1] The first parcel, a .92-acre tract of land (".92 tract") containing the Pickett homestead, was conveyed through a warranty deed from Mary Margaret Pickett ("Mary") to her husband, Norval Pickett, Jr. ("Norval"), her son, Kenneth, and her daughter, Margaret, as joint tenants with rights of survivorship on June 12, 1996. On December 20, 1997, Norval recorded a warranty deed, which conveyed his undivided one-third interest in the .92 tract to Kenneth. Kenneth and Margaret then

[1] Although these two parcels of land have an extensive history of conveyances between different parties, members of the Pickett family, and various corporations owned by the Pickett family, we focus on the most pertinent and recent of these land transfers.

conveyed the .92 tract by quitclaim deed, recorded on June 21, 2004, to Margaret Cooper, LLC, subject to a life estate in Mary. Craig and Carson are the sons of Margaret and the only members of Margaret Cooper, LLC. In a quitclaim deed recorded on October 20, 2004, Margaret Cooper, LLC conveyed the .92 tract and the life estate interest of Mary to Craig and Carson, as tenants in common.

The second parcel of land at issue in this case is a .68-acre tract (".68 tract"), which adjoined the .92 tract to the south. On June 30, 1994, Mary conveyed this parcel of land by warranty deed to Pick & Save, Inc. ("Pick & Save"), a closely held corporation, of which Kenneth was the only shareholder. In December 1998, Pick & Save conveyed .60 acres of the .68 tract to Coneqtec Corp., a Kansas Corporation, by corporate warranty deed, which left a .08-acre tract of land (".08 tract") owned by Pick & Save. This .08 tract of land was a pie-shaped area of land that contained the driveway leading up to the garage of the home on the .92 tract of land and a portion of the yard.

The .08 tract had been used as the driveway to the Pickett home for at least fifteen years since the attached garage was built and for many years prior. This driveway provided the only access to the home's garage. Even before the ownership of the .68 tract by the Pickett family, it was occasionally used by the family and others to park their vehicles when visiting. When the .60 tract was conveyed to Coneqtec, Pickett retained possession of the .08 tract so that he and his mother could continue to use the driveway to the home. At the time of the sale, Pickett required that a wooden privacy fence be built along the boundary line, south of the driveway, to facilitate this continued use of the driveway. This fence created the appearance that it was the south property line of the .92

tract. Prior to and at the time that Kenneth and Margaret conveyed the .92 tract to Margaret Cooper, LLC, Margaret believed that the .08 tract was a part of the conveyance. Craig and Carson, the members of Margaret Cooper, LLC also held such a belief.

In January 2005, after Mary had passed away, Kenneth made a statement to Margaret and her husband that he may own a sliver of land "south of the drive," but was not sure, and that, if he did own it, he would convey it to Craig and Carson. *Tr*. at 49, 161. He made the same statement to Margaret in February, and in March, he told Margaret's husband that he did in fact own a sliver of land and that he would "turn it over." *Id*. at 162. Subsequently, Kenneth had a deed prepared to convey the .08 tract, but prior to executing the deed, a family dispute arose, and thereafter, he refused to execute it.

Although the .08 tract was owned by Pick & Save, at the time that the deed was prepared in 2005, there was a question as to whether the corporation was still in existence. When the deed was prepared, the title company made a notation that it had been informed that Pick & Save was no longer in existence at that time. Pickett testified that he had been unsure at that time whether Pick & Save had been dissolved. Additionally, in the answer to the complaint, Pickett stated that the corporation had been dissolved.

Cooper filed a complaint against Pickett on May 12, 2006. A bench trial was held, and on March 13, 2008, the trial court issued findings of fact, conclusions thereon, and judgment in favor of Cooper ordering reformation of the deed to include the .08 tract. Pickett now appeals.

DISCUSSION AND DECISION

Where, as here, the trial court enters specific findings of fact and conclusions thereon *sua sponte*, we apply a two-tiered standard of review. *Bank of America, N.A. v. Ping*, 879 N.E.2d 665, 669 (Ind. Ct. App. 2008). We must determine whether the evidence supports the findings and whether the findings support the judgment. *Id*. "The trial court's findings and conclusions will be set aside only if they are clearly erroneous, i.e., when the record contains no facts or inferences supporting them." *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id*. We neither reweigh the evidence nor assess the credibility of the witnesses, but consider only the evidence most favorable to the judgment. *Id*.

I. Mutual Mistake

"Reformation is 'an extreme equitable remedy to relieve the parties of mutual mistake or fraud.'" *Meyer v. Marine Builders, Inc.*, 797 N.E.2d 760, 772 (Ind. Ct. App. 2003) (quoting *Estate of Reasor v. Putnam County*, 635 N.E.2d 153, 158 (Ind. 1994)). The remedy of reformation is extreme because written instruments are presumed to reflect the intentions of the parties to the instruments. *Id*. Therefore, courts in Indiana may reform written contracts only if: (1) there has been a mutual mistake; or (2) one party makes a mistake accompanied by fraud or inequitable conduct by the other party. *Monroe Guar. Ins. Co. v. Langreck*, 816 N.E.2d 485, 490 (Ind. Ct. App. 2004). "A mutual mistake arises if 'there has been a meeting of the minds, an agreement actually entered into, but the document in its written form does not express what the parties actually intended.'" *Meyer*, 797 N.E.2d at 772 (quoting *Plumlee v. Monroe Guar. Ins.*

Co., 655 N.E.2d 350, 356 (Ind. Ct. App. 1995), *trans. denied* (1996)). Reformations for mutual mistakes are only available if they are mistakes of fact and not mistakes of law. *Id*. Further, "[e]quity should not intervene and courts should not grant reformation where the complaining party failed to read the instrument, or, if he read it, failed to give heed to its plain terms." *Langreck*, 816 N.E.2d at 490. In a reformation action, it is the intent of the parties that controls. *Meyer*, 797 N.E.2d at 772. To determine the true intent of the parties, we may look to their conduct during the course of the contract. *Id*.

Pickett argues that the trial court erred when it concluded that the transfer of the .92 tract by Kenneth and Margaret to Margaret Cooper, LLC was a mutual mistake and therefore the remedy of reformation could be applied. Pickett specifically contends that the following two findings by the trial court were not supported by the evidence:

> 12. When Kenneth R. Pickett and Margaret L. Cooper conveyed to Margaret Cooper, LLC subject to the life estate in their mother, Mary Margaret Pickett, the intent was to convey the Pickett home located on the .92-acre tract and the driveway leading to that home which is located on the .08-acre pie-shaped tract.
>
> 13. The conveyance to Margaret Cooper, LLC and subsequently to Craig S. Cooper and Carson L. Cooper (her sons) mistakenly excluded the .08-acre pie-shaped tract from the legal description in the respective deeds.

Appellant's App. at 9. He claims this is because the evidence showed only that Margaret believed that the .08 tract was included in the .92 tract, but that Pickett, the other grantor, knew this not to be, as he knew that the .08 tract was owned by Pick & Save, which was not part of the conveyance of the .92 tract. Therefore, there was no meeting of the minds about conveying the .08 tract of land by the deed and no mutual mistake, and the trial court erred in ordering reformation of the deed.

The evidence presented at the hearing showed that in June 2004, Kenneth and Margaret conveyed the .92 tract, subject to a life estate in Mary, to Margaret Cooper, LLC. Margaret Cooper, LLC later conveyed its interest to Craig and Carson as tenants in common. The .08 tract had been part of the .68 tract deeded to Pick & Save by Mary, and when Pick & Save sold the parcel of land, the .08 was specifically divided out of the conveyance. Prior to and after the conveyances of the .92 tract, the .08 tract was used as the driveway to the Pickett home. Pickett testified that he retained the .08 tract so it could continue to be used as the driveway to the home. At the time of the sale of the .60 tract, Pickett required that a wooden privacy fence be built along the boundary line, south of the driveway, to facilitate this continued use of the driveway. This fence created the appearance that it was the south property line of the .92 tract. Margaret, Craig, and Carson all testified that they believed that the .08 tract was a part of the .92 tract and therefore a part of the conveyance of such parcel of land. After Mary passed away, Pickett made a statement to both Margaret and her husband that he may still own a sliver of land "south of the drive," but was not certain, and if he did, he was going to "turn it over." *Tr*. at 49, 161-62. He reiterated his intention to convey the .08 tract after he ascertained that he indeed still owned the parcel. Pickett even had a deed prepared to convey the .08 tract, but never executed it because a family dispute arose. The evidence presented supported the trial court's findings that Pickett intended to convey the .08 tract when the .92 tract was conveyed and that said tract of land was mistakenly excluded from the legal description in the respective deeds. We conclude that the trial court did not err

in determining that a mutual mistake was made in the conveyance of the .92 tract, and it properly applied the remedy of reformation.

II. Gift

"When a deed is exchanged in a contractual relationship, both the grantor and grantee are obligated to perform in some type of fashion, which creates the opportunity for a mutual mistake to occur." *Wright v. Sampson*, 830 N.E.2d 1022, 1027 (Ind. Ct. App. 2005). However, when a deed is given as a gift, the grantor is the only one with an obligation, and only a unilateral mistake is likely to occur. *Id*. Therefore, when a deed is given as a gift, it may only be reformed upon the application of the grantor against the grantee, and mistakes will not be corrected upon the application of the grantee against the grantor. *Id*. at 1028 (citing *Randall v. Ghent*, 19 Ind. 271, 272 (1862)).

Pickett argues that the trial court erred in concluding that the conveyance of the .92 tract to Margaret Cooper, LLC was not a gift and contends that finding number eighteen was not supported by the evidence. Pickett specifically claims that the evidence did not support the finding that adequate consideration was given for the conveyance and that he received nothing for conveying his two-thirds interest in the .92 tract. He alleges that because the trial court erroneously concluded that the conveyance was a gift, it applied the incorrect standard of review and that the deed could not be reformed because a unilateral mistake was not made by him as the grantor.

In finding number eighteen, the trial court found that Pickett did not make a gift and that the conveyance was part of an agreement by the family including the parents, Norval and Mary, that Margaret would have the homestead. The trial court also found

that Pickett had a moral obligation to fulfill the wishes of his parents and transfer the parcel of land. Additionally, the trial court found that sufficient consideration for this conveyance was provided in that Margaret paid money for document preparation, unrelated legal fees of Pickett, and back taxes and had given past services to her parents in addition to the family agreement.

We first note that this is not a case of unilateral mistake where a grantee is solely seeking to correct a mistake against a single grantor. Rather, in this case, there were two grantors, and both the grantee and one of the grantors agree that a mistake was made and were seeking to correct the mistake. Further, since we concluded in the previous section that the evidence supported that a mutual mistake occurred in the conveyance of the .92 tract, Pickett's argument as to unilateral mistake is not relevant.

Nevertheless, the evidence presented supported the trial court's finding that the conveyance was not a gift. Both Margaret and Craig testified that they paid various legal fees and back taxes that they were not otherwise required to pay. Pickett got some benefit from these payments. Additionally, the evidence showed that the entire Pickett family had engaged in a "deed hopping" strategy, where for years they had placed the ownership of real estate in various family members' names when they desired and when it suited the purposes at the time. For instance, the .68 tract had once been conveyed to Margaret, who later conveyed it to Kenneth, and Kenneth conveyed it to a family-owned corporation, which later conveyed it to Norval. Norval deeded the .68 tract to Mary, who conveyed it to Pick & Save. As part of this family agreement, Pickett had received various pieces of property from his family. Both Margaret and Kenneth testified that it

was their parents' wishes that Margaret received the .92 tract that contained the family home. *Tr*. at 66-67, 209-11. We therefore conclude that the evidence supported the trial court's finding that this conveyance was not a gift.

III. Reformation for Corporation

Pickett finally argues that the trial court erred in reforming the deed because the .08 tract was owned by a third party, Pick & Save, that was not involved in the original agreement to convey the .92 tract to Margaret Cooper, LLC. He contends that Pick & Save was not a party to the deed, which is the subject of reformation in this case. He therefore claims that it was error for the trial court to order reformation of a deed to now include an interest in land that was owned by neither grantor of the original deed.

Pick & Save was a closely held corporation, with Kenneth as the president and sole shareholder. Kenneth testified at the hearing that he was unsure of the status of the corporation at the time of the conveyance of the .92 tract and that Pick & Save had not filed corporate entity reports with the Secretary of State. *Id*. at 234-37. Additionally, at the time he had the deed prepared to convey the .08 tract, he was unsure of the status of Pick & Save and told the title company to talk with his attorney to determine the status. *Id*. at 113-14, 236. Further, when the .60 tract was conveyed to Coneqtec by Pick & Save a corporate resolution was drafted. However, when Pickett had a deed prepared for the conveyance of the .08 tract, there is no evidence that a corporate resolution was drafted, which supported an inference that the corporation was dissolved. Therefore, the evidence supported the trial court's finding that the corporation may have been dissolved and that either Kenneth should correct the mistake that occurred when the .92 tract was conveyed

or that Pick & Save, by Kenneth, its sole shareholder and president, should be accountable for correcting the mistake.

Affirmed.

VAIDIK, J., and CRONE, J., concur.